IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Bail Appl..No. 7251 of 2007()

CRIME NO. 672/07 OF THALIPARAMBA POLICE STATION

PETITIONER/ACCUSED NO.2 & 3

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1. SOMAN, S/O. RAJU, AGED 26 YEARS,
POOVATHUM KUNNEL, PATHANPARA, ALAKODE, KANNUR.

2. VIKAS, S/O. LATE BHASKARAN, AGED 24 YRS,
THAZHATH VEETIL, CHORUKKALA P.O., KURUMATHOOR,
KANNUR.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, REPRESENTING SUB INSPECTOR OF POLICE,
TALIPARAMBA POLICE STATION.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7251 of 2007

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Dated this the 28th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 2 and 3. Altogether there are three accused persons. The first accused has already been arrested and enlarged on bail. The petitioners, along with the co-accused, face allegations that they have committed theft of coconuts from an item of property belonging to the Panchayat. They are also alleged to have indulged in anti-social activities of causing mischief in the property of the Panchayat. Crime was registered on 13.11.2007. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are totally false. Only a frivolous allegation that theft of tender coconuts was committed was raised against the petitioners. In any view of the matter, the petitioners do deserve the invocation of the extra ordinary equitable discretion under

Section 438 Cr.P.C. Internecine disputes in a ruling political party is prompting the Panchayat to raise allegations against the petitioners.

3. The learned Prosecutor opposes the application. The available data point to the complicity of the petitioners. They may be directed to surrender before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course, submits the learned Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Prosecutor. In view of the nature of the contentions raised, the case diary was directed to be placed before me. I have perused the same. I have gone through the nature of the grievance raised. I have gone through the statements of the eye witnesses, who had seen the occurrence. I am unable to find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the

learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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